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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 A BETTER WAY FOR BPA,

12 Plaintiff,

NO.

13 v.

14 UNITED STATES DEPARTMENT OF
15 ENERGY BONNEVILLE POWER
ADMINISTRATION,

Defendant.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

16
17 **I. NATURE OF ACTION**

18 1. Plaintiff A Better Way for BPA (“Better Way”) brings this action under the
19 Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Through a FOIA request, Better Way
20 sought records from Defendant United States Department of Energy (“USDOE”) Bonneville
21 Power Administration (“BPA”). BPA is proposing to build a 500 kilovolt lattice-steel-tower
22 transmission line that would run from a new substation near Castle Rock, Washington to a new
23 substation near Troutdale, Oregon (the “I-5 Corridor Reinforcement Project”). Prior to deciding
24 on a route for the project, BPA has undertaken to prepare an environmental impact statement
25 (“EIS”) for its I-5 Corridor Reinforcement Project. Better Way requested documents from the
26

1 BPA related to the EIS. BPA failed to respond to Better Way's request within the statutorily
 2 prescribed time limit, failed to disclose the requested documents, and unlawfully withheld the
 3 requested information. Better Way now asks the Court to find that the BPA has violated FOIA
 4 and to order BPA to respond to the request and produce all responsive agency records improperly
 5 withheld from Better Way in a timely manner.
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7 2. Plaintiff seeks declaratory relief establishing that Defendant has violated FOIA as
 8 to its I-5 Corridor Reinforcement Project FEIS request, and injunctive relief directing Defendant
 9 to promptly provide Better Way with the requested information in a timely manner.

10 II. JURISDICTION AND VENUE

11 3. This Court has jurisdiction over this action pursuant to FOIA, 5 U.S.C. §
 12 552(a)(4)(B). This Court also has jurisdiction over this action under 28 U.S.C. § 1311 (federal
 13 question).
 14

15 4. This Court has the authority to grant declaratory relief pursuant to the Declaratory
 16 Judgment Act, 28 U.S.C. § 2201 *et seq.*

17 5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because no
 18 real property is involved in this action and Plaintiff is incorporated and has its principal place of
 19 business in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).
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21 6. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. §
 22 2414 and 5 U.S.C. § 552(a)(4)(E).

23 III. PARTIES

24 7. Plaintiff Better Way is a nonprofit organization incorporated in the state of
 25 Washington. Better Way has members throughout southwest Washington.
 26

8. Better Way is dedicated to protecting the rural and forest lands of southwest Washington from an unnecessary power line when alternative routes are available that would be less expensive and have less adverse impact on the environment.

9. Defendant BPA is an agency of the United States, within the meaning of 5 U.S.C. § 552(f)(1), and has a duty to provide public access documents in its possession consistent with the requirements of FOIA. It has possession of, and control over, the records that Plaintiff seeks, and is denying Plaintiff access to its records in contravention of federal law. BPA is one of four regional federal power marketing agencies within the USDOE. BPA is located at 905 NE 11th Ave., Portland, Oregon 97232.

IV. STATUTORY FRAMEWORK

10. FOIA promotes open government by providing every person with a right to request and receive federal agency records. 5 U.S.C. § 552(a)(3)(A), (f).

11. In furtherance of its purpose to encourage open government, FOIA imposes strict deadlines on agencies to provide responsive documents to FOIA requests. 5 § 552(a)(6)(A); 10 C.F.R. § 1004.5(d).

12. An agency must comply with a FOIA request by issuing an initial determination within twenty days after receipt of the request. 5 § 552(a)(6)(A)(i); 10 C.F.R. § 1004.5(d)(1).

13. The determination “must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions.” *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013).

20. The EIS analyzes four action alternatives that include transmission line routes, three sites for the proposed substation near Castle Rock, and one site for the proposed substation near Troutdale. 40 C.F.R. § 1502.14. The transmission line routing alternatives and options use varying amounts of existing BPA right-of-way and new 150-foot-wide right-of-way. The routing alternatives and options range from about 67 to 80 miles long. BPA is considering different tower designs (single circuit, double circuit, and triple circuit) for portions of the alternatives and options on existing right-of-way where existing transmission lines may be removed or replaced. In addition to the transmission line and substations, the proposed project includes construction of new access roads and improvements of existing access roads for the line and substations. BPA's preferred alternative is the Central Alternative using Central Option 1.

21. BPA has not yet released the FEIS for the I-5 Corridor Reinforcement Project, though it currently projects that it will release the FEIS in early 2016. An FEIS is required to respond to comments submitted by the public and the agency "shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised." 40 C.F.R. § 1502.9(b).

22. Better Way and members of Better Way have submitted comments on the DEIS.

23. Plaintiff and its members were very concerned by the long delay between the end of the comment period on the DEIS and the publication of the as-yet-unreleased FEIS. As this is a matter of critical concern to Better Way and its members, Better Way prepared a FOIA request to BPA relating to the preparation of the FEIS and the consideration of alternatives in the NEPA process.

1 24. Better Way submitted its FOIA request on January 31, 2015. Specifically, Better
2 Way requested:

- 3 a. BPA's contracts with consultants for work on reviewing comments
4 submitted on the DEIS.
5
6 b. BPA's contracts with consultants for work on preparing the FEIS.
7
8 c. BPA's timeframe and/or plans with regard to preparation of the FEIS.
9
10 d. Any issues that were not addressed in the DEIS that BPA now expects to
11 include in the FEIS.
12
13 e. All documents since December 23, 2012, that relate to any of the
14 alternative routes in Oregon.
15
16 f. All studies, documents, notes, and emails related to double circuiting the
17 proposed new transmission lines using existing or new transmission towers
18 along the West Alternative, including, but not limited to, the use of
19 existing access roads and tower locations on wetlands.

20 25. On February 16, 2015, counsel for Better Way revised the request to exclude
21 pricing information from contracts with consultants.

22 26. On February 18, 2015, BPA acknowledged receipt of Better Way's revised FOIA
23 request and assigned number FOIA #BPA-201 5-00597-F to the request in a letter to Better Way.

24 27. In the same letter, BPA acknowledged the 20-day deadline which can be extended
25 by 10-days only in "unusual circumstances." 5 U.S.C. § 552(a)(6)(B)(i). BPA also
26 acknowledged that if an agency cannot fulfill the request within 30 working days, the agency
 must (a) notify the requester and (b) work with the requester to modify or limit the scope of the
 request or arrange an alternative time frame for processing. 5 U.S.C. § 552(a)(6)(B)(ii).

1 28. Despite these clear limitations on the amount of time BPA could take to respond to
2 Better Way's FOIA request, BPA estimated that it could not give a formal response to the request
3 until September 30, 2015 — over seven months from when BPA received the request — due to
4 the need to allow third party business entities time to review the records and object to any
5 releases under 5 U.S.C. § 552(b)(4).
6

7 29. On September 28, 2015, BPA informed Better Way that the records responsive to
8 Better Way's FOIA request had been gathered by the agency, but would be further delayed to
9 allow third party business entities time to review the records and object to any releases under 5
10 U.S.C. § 552(b)(4) — despite the fact that third party review was the justification for BPA's
11 initial delay in releasing the records.
12

13 30. On November 13, 2015, Better Way's counsel contacted the FOIA officer in
14 charge of Better Way's FOIA request to determine the cause of delay considering that the records
15 were already assembled. Better Way's counsel indicated the time-sensitive nature of the request.
16 BPA failed to provide any rational reason for any further delay and could only offer vague
17 promises that the request was being handled.
18

19 31. On November 16, 2015, Better Way's counsel again contacted BPA in an attempt
20 to discern the cause of the considerable delay in producing the records. Again, BPA could not
21 offer an explanation for the delay.
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23 32. To date — nearly ten months after submitting the request and nine months after
24 the statutory response deadline — Better Way has not received any documents in response to its
FOIA request.

25 33. Better Way has fully exhausted its administrative remedies. Administrative
26 remedies are deemed exhausted whenever an agency fails to comply with the applicable time

1 limits, as stated by 5 U.S.C. § 552(a)(6)(C). Better Way's only recourse is for this Court to
2 enforce the remedies and public access to agency records guaranteed by the FOIA.

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4 **VI. CAUSE OF ACTION**

5 **Violation of the Freedom of Information Act**

6 34. The foregoing paragraphs are re-alleged and incorporated by reference.

7 35. Better Way made a proper FOIA request for information regarding BPA's
8 preparation of the FEIS and the consideration of alternatives for the proposed I-5 Corridor
9 Reinforcement Project.

10 36. Better Way has attempted to communicate with BPA, making inquiries as to the
11 status of the request and working with the agency to narrow or clarify the scope of the request as
12 necessary, to no avail. BPA has repeatedly failed to adequately respond to requests for
13 information under this FOIA request.

14 37. BPA's failure to respond adequately to the request within statutory timelines is a
15 violation of FOIA, 5 U.S.C. § 552, and the Department of Energy's own regulations promulgated
16 thereunder, 10 C.F.R. § 1004.

17 38. Plaintiff has fully exhausted its administrative remedies with regard to this request.
18 Administrative remedies are deemed exhausted whenever an agency fails to comply with the
19 applicable time limits, as stated by 5 U.S.C. § 552(a)(6)(C).

20 39. For these reasons, BPA is in violation of FOIA and its implementing regulations.
21 5 U.S.C. § 552; 10 C.F.R. § 1004.

22 40. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with
23 this litigation pursuant to 28 U.S.C. § 2414 and 5 U.S.C. § 552(a)(4)(E).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff A Better Way for BPA respectfully requests this Court to enter judgment in its favor, and:

1. Declare as unlawful BPA's failure to respond to Better Way's FOIA request (FOIA #BPA-201 5-00597-F) regarding BPA's preparation of the FEIS and the consideration of alternatives for the proposed I-5 Corridor Reinforcement Project;

2. Declare as unlawful BPA's failure to disclose records that Better Way has requested pursuant to this request;

3. Order BPA to produce all non-exempt records requested by Better Way pursuant to request no. FOIA #BPA-201 5-00597-F as soon as practicable, by a date certain;

4. Exercise close supervision over BPA as it processes Better Way's request no. FOIA #BPA-201 5-00597-F or, in the alternative, appoint a special master to do so;

5. Award to Better Way all costs and reasonable attorneys' fees as provided in 5 U.S.C. § 552(a)(4)(E) or any other law; and

6. Grant other and further relief as the Court may deem just and proper.

Dated this 9th day of December, 2015.

Respectfully submitted,

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